

**“Rational Basis” Test Within the Intent of the New ESEA  
as Perceived by State and Local Agencies  
Likely to Become the Hallmark of Compliance**

*A Technology Monitoring and Information Service (TechMIS)  
SPECIAL REPORT*

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During the legislative conference of the Council of Great City Schools in mid-March, several respected USED officials appeared to buy into the Council’s recommendation that “compliance should be based upon a reasonableness standards or rational basis test of ESEA interpretations by state and local education agencies.” It is likely that USED and other key officials in this Administration will continue to be influenced by the Council’s position for two reasons: (a) the Council of Great City Schools was the only national education association to support vocally the No Child Left Behind proposal and the resulting ESEA reauthorization; and (b) its 50+ member districts will receive over 20 percent of all Title I and other funding.

During the three-day conference -- which was attended by some superintendents, virtually all lobbyists and/or directors of Federal programs of the large school district membership, and several representatives of large education publishers who sponsored events -- one of the biggest issues raised by attendees related to interpretation and compliance of ESEA provisions related to “highly-qualified” teachers and new high qualifications imposed upon teacher aide hiring. The Council’s position related to newly-hired teachers having to meet the new qualifications as early as next school year is:

“If this provision is interpreted to mean these new requirements are applicable to any newly-hired teacher working in a Title I schoolwide program as opposed to a new teacher directly paid for with Title I funds, vast numbers of schools in districts will be in immediate noncompliance at the start of next school year. School districts faced with teacher shortages will have no alternative but to fill

their classroom vacancies at the beginning of the school year with the best available staffing --- often including personnel teaching out of their field.”

In response to this issue as well as others, Dr. Joseph Johnson, USED’s National Title I Director, on several occasions referred to the “spirit of the legislation” being more important than what’s written on paper and that large urban districts will be a “critical cog” in the machinery to ensure the new legislation is implemented as intended. Dr. Johnson noted that any USED monitoring will be “achievement focused” to determine whether movement in the direction of improved student academic achievement is occurring. He emphasized that adherence to the amount of testing in the new Law is not nearly as important as what happens to the results of such tests and how they are used to improve student academic performance. He noted that, while it is important that many more schools would be designated as schoolwide programs because of the reduction of the poverty threshold from 50 percent to 40 percent or more poverty enrollment, increased flexibility is not as important as school officials rethinking what they are currently doing in new or existing schoolwide programs and how they can improve the overall program and student performance. Prior to joining USED a year ago, Dr. Johnson spent more than five years evaluating high-performing and low-performing Title I schools, including many schoolwide programs, to identify practices which appear to be effective in increasing student performance and reducing achievement gaps between subgroups of Title I students. In a related vein, he reiterated what he said a year ago at the annual NAFEPA conference regarding scientifically-based research to identify proven practices --- namely, that the only area in which there is research-based evidence of effective practices to improve reading is at the early childhood level. While proven practices based on scientifically-based research are very sparse in other subject areas and levels, he suggested that attendees select products and services based upon whatever hard evidence is available rather than vendors’ “sales pitches.”

In response to a question related to “supplemental services” -- which must be provided as a parent option for low-achieving students in schools targeted for improvement for at least three consecutive years -- Dr. Johnson suggested that districts establish alternative programs which could include after-school projects or other academic programs and attempt to have the State Department of Education include such projects on the state-approved list of alternative supplemental services and providers. A strict interpretation of the legislation strongly suggests

that supplemental services options have to be provided by outside alternative providers; he noted that Title I administrators do not like to see Title I funds “following the child” to such providers.

Dr. Johnson also offered advice based upon his experience as a state director of Title I and state director of special education and the knowledge base accumulated in his research activities on effective practices. He urged districts to work with SEA officials in developing consolidated state plans which will influence the type of local consolidated plans to be developed by districts. He also advised district officials who have developed Title I programs reflecting their perception of the “spirit of the Law” and their interpretation of certain provisions, not to ask too many questions unless they are ready for the answers --- just do it! After his presentation, I asked Dr. Johnson about the provision that related to supplemental services having to be in close proximity to the district in order to be on the approved state list and whether or not online remediation and tutoring from a remote source would be allowable. He stated bluntly that he saw no reason why it would not be allowable as he concurred that the new Title I assessment provisions are driving online assessments.

Also during the Council’s annual conference, Dr. Robert Pasternack, the recently-appointed Assistant Secretary for Special Education and Rehabilitation Services and formerly State Director of Special Education in New Mexico, discussed several ideas that he has formulated as he participated in regional meetings addressing proposed changes in the IDEA reauthorization. He noted that, during the ESEA reauthorization, President Bush clearly indicated that he would not support “full funding” for IDEA in order to meet the 40 percent Federal contribution as stated in the 1975 legislation, until major changes and reforms were made in IDEA. He emphasized the need to move from a set of process-oriented procedures -- which consume a lot of special education teacher time conducting meeting, writing reports, and other administrative procedures rather than teaching -- to a more results-oriented approach where schools and districts are held accountable for ensuring students designated for special education programs receive the highest quality of instruction. In many cases, their reading and other problems can be remediated, thus allowing them to exit costly special education programs. However, he did note the IDEA funding formula which allocates the same Federal amount per pupil for students with severe disabilities and those with mild disabilities should be changed, through a weighting

process which allocates more funds for those with severest disabilities. While the Administration has proposed a relatively large increase in IDEA funding next year, he felt that relatively more should be allocated to the “infants and toddlers” program and “teacher preparation” programs, noting the need to expand the concept of master teacher “coaching” for new special education teachers. In the area of research, he asked the urban district attendees to plead the case for increased R&D on effective mental health approaches, especially for adolescent youth, and provide funding for implementation, particularly at the middle and high school levels.

After his presentation, I mentioned one of the findings from our recent special education survey to Dr. Pasternack --- namely, that while many urban special education directors were aware of the provision allowing commingling of Title I and IDEA funds in schoolwide programs, the vast majority did not allow it. And conversely, while only about half of the special education directors were aware of the “incidental use” provision allowing products purchased with IDEA funds to be used with nonspecial education students under certain conditions, most of those who were aware of this provision were actually implementing it. When asked why, I suggested that USED and SEAs need to make district officials more aware of the incidental use provision and encourage its use. Regarding commingling of Federal funds, which is clearly stated as allowable and even encouraged in the new ESEA, the major stumbling block has been a combination of SEA policies discouraging commingling and turf battles which continue to exist between Title I and special education directors at the district level. He asked for copies of summary findings implying that he would like to share this with the new Commission appointed by the President to recommend changes in IDEA by mid-summer.

On the second day of the conference, luncheon speaker Congressman Chaka Fattah, a four-term Democrat who represents Philadelphia, was fervent in discrediting Edison Schools planned takeover of a large number of Philadelphia schools, either as a management firm or a consultant, with estimated fees approaching \$100 million. His criticism of the state actually supporting Edison was based upon claims that many of the initial Edison districts have canceled contracts with the firm for little increase (if not actual decreases) in student performance over time, alleged use of low-quality instructional staff, and high staff turnover. Rather, he felt that the money

could be better spent if used to improve the quality of teaching. While he did not mention it in his address, the Congressman has also directed the Government Accounting Office to review the various studies and claims regarding the effectiveness of Edison programs.